

SENATE BILL NO. 1169

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR RAZER.

5361S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 452.375, RSMo, and to enact in lieu thereof one new section relating to child custody.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 452.375, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 452.375,
3 to read as follows:

452.375. 1. As used in this chapter, unless the
2 context clearly indicates otherwise:

3 (1) "Custody" means joint legal custody, sole legal
4 custody, joint physical custody or sole physical custody or
5 any combination thereof;

6 (2) "Joint legal custody" means that the parents share
7 the decision-making rights, responsibilities, and authority
8 relating to the health, education and welfare of the child,
9 and, unless allocated, apportioned, or decreed, the parents
10 shall confer with one another in the exercise of decision-
11 making rights, responsibilities, and authority;

12 (3) "Joint physical custody" means an order awarding
13 each of the parents significant, but not necessarily equal,
14 periods of time during which a child resides with or is
15 under the care and supervision of each of the parents.
16 Joint physical custody shall be shared by the parents in
17 such a way as to assure the child of frequent, continuing
18 and meaningful contact with both parents;

19 (4) "Third-party custody" means a third party
20 designated as a legal and physical custodian pursuant to
21 subdivision (5) of subsection 5 of this section.

22 2. The court shall determine custody in accordance
23 with the best interests of the child. When the parties have
24 not reached an agreement on all issues related to custody,
25 the court shall consider all relevant factors and enter
26 written findings of fact and conclusions of law, including,
27 but not limited to, the following:

28 (1) The wishes of the child's parents as to custody
29 and the proposed parenting plan submitted by both parties;

30 (2) The needs of the child for a frequent, continuing
31 and meaningful relationship with both parents and the
32 ability and willingness of parents to actively perform their
33 functions as mother and father for the needs of the child;

34 (3) The interaction and interrelationship of the child
35 with parents, siblings, and any other person who may
36 significantly affect the child's best interests;

37 (4) Which parent is more likely to allow the child
38 frequent, continuing and meaningful contact with the other
39 parent;

40 (5) The child's adjustment to the child's home,
41 school, and community;

42 (6) The mental and physical health of all individuals
43 involved, including any history of abuse of any individuals
44 involved. If the court finds that a pattern of domestic
45 violence as defined in section 455.010 has occurred, and, if
46 the court also finds that awarding custody to the abusive
47 parent is in the best interest of the child, then the court
48 shall enter written findings of fact and conclusions of
49 law. Custody and visitation rights shall be ordered in a
50 manner that best protects the child and any other child or

51 children for whom the parent has custodial or visitation
52 rights, and the parent or other family or household member
53 who is the victim of domestic violence from any further harm;

54 (7) The intention of either parent to relocate the
55 principal residence of the child; and

56 (8) The wishes of a child as to the child's
57 custodian. The fact that a parent sends his or her child or
58 children to a home school, as defined in section 167.031,
59 shall not be the sole factor that a court considers in
60 determining custody of such child or children.

61 3. (1) In any court proceedings relating to custody
62 of a child, the court shall not award custody or
63 unsupervised visitation of a child to a parent if such
64 parent or any person residing with such parent has been
65 found guilty of, or pled guilty to, any of the following
66 offenses when a child was the victim:

67 (a) A felony violation of section 566.030, 566.031,
68 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,
69 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
70 566.203, 566.206, 566.209, 566.211, or 566.215;

71 (b) A violation of section 568.020;

72 (c) A violation of subdivision (2) of subsection 1 of
73 section 568.060;

74 (d) A violation of section 568.065;

75 (e) A violation of section 573.200;

76 (f) A violation of section 573.205; or

77 (g) A violation of section 568.175.

78 (2) For all other violations of offenses in chapters
79 566 and 568 not specifically listed in subdivision (1) of
80 this subsection or for a violation of an offense committed
81 in another state when a child is the victim that would be a
82 violation of chapter 566 or 568 if committed in Missouri,

83 the court may exercise its discretion in awarding custody or
84 visitation of a child to a parent if such parent or any
85 person residing with such parent has been found guilty of,
86 or pled guilty to, any such offense.

87 4. The general assembly finds and declares that it is
88 the public policy of this state that frequent, continuing
89 and meaningful contact with both parents after the parents
90 have separated or dissolved their marriage is in the best
91 interest of the child, except for cases where the court
92 specifically finds that such contact is not in the best
93 interest of the child, and that it is the public policy of
94 this state to encourage parents to participate in decisions
95 affecting the health, education and welfare of their
96 children, and to resolve disputes involving their children
97 amicably through alternative dispute resolution. In order
98 to effectuate these policies, the court shall determine the
99 custody arrangement which will best assure both parents
100 participate in such decisions and have frequent, continuing
101 and meaningful contact with their children so long as it is
102 in the best interests of the child.

103 5. Prior to awarding the appropriate custody
104 arrangement in the best interest of the child, the court
105 shall consider each of the following as follows:

106 (1) Joint physical and joint legal custody to both
107 parents, which shall not be denied solely for the reason
108 that one parent opposes a joint physical and joint legal
109 custody award. The residence of one of the parents shall be
110 designated as the address of the child for mailing and
111 educational purposes;

112 (2) Joint physical custody with one party granted sole
113 legal custody. The residence of one of the parents shall be

114 designated as the address of the child for mailing and
115 educational purposes;

116 (3) Joint legal custody with one party granted sole
117 physical custody;

118 (4) Sole custody to either parent; or

119 (5) Third-party custody or visitation:

120 (a) When the court finds that each parent is unfit,
121 unsuitable, or unable to be a custodian, or the welfare of
122 the child requires, and it is in the best interests of the
123 child, then custody, temporary custody or visitation may be
124 awarded **to** a person related by consanguinity or affinity to
125 the child **who is deemed by the court to be suitable and able**
126 **to provide an adequate and stable environment for the**
127 **child.** If no person related to the child by consanguinity
128 or affinity is willing to accept custody **and is deemed**
129 **suitable and able by the court,** then the court may award
130 custody to any other person or persons deemed by the court
131 to be suitable and able to provide an adequate and stable
132 environment for the child. Before the court awards custody,
133 temporary custody or visitation to a third person under this
134 subdivision, the court shall make that person a party to the
135 action;

136 (b) Under the provisions of this subsection, any
137 person may petition the court to intervene as a party in
138 interest at any time as provided by supreme court rule.

139 6. If the parties have not agreed to a custodial
140 arrangement, or the court determines such arrangement is not
141 in the best interest of the child, the court shall include a
142 written finding in the judgment or order based on the public
143 policy in subsection 4 of this section and each of the
144 factors listed in subdivisions (1) to (8) of subsection 2 of
145 this section detailing the specific relevant factors that

146 made a particular arrangement in the best interest of the
147 child. If a proposed custodial arrangement is rejected by
148 the court, the court shall include a written finding in the
149 judgment or order detailing the specific relevant factors
150 resulting in the rejection of such arrangement.

151 7. Upon a finding by the court that either parent has
152 refused to exchange information with the other parent, which
153 shall include but not be limited to information concerning
154 the health, education and welfare of the child, the court
155 shall order the parent to comply immediately and to pay the
156 prevailing party a sum equal to the prevailing party's cost
157 associated with obtaining the requested information, which
158 shall include but not be limited to reasonable attorney's
159 fees and court costs.

160 8. As between the parents of a child, no preference
161 may be given to either parent in the awarding of custody
162 because of that parent's age, sex, or financial status, nor
163 because of the age or sex of the child. The court shall not
164 presume that a parent, solely because of his or her sex, is
165 more qualified than the other parent to act as a joint or
166 sole legal or physical custodian for the child.

167 9. Any judgment providing for custody shall include a
168 specific written parenting plan setting forth the terms of
169 such parenting plan arrangements specified in subsection 8
170 of section 452.310. Such plan may be a parenting plan
171 submitted by the parties pursuant to section 452.310 or, in
172 the absence thereof, a plan determined by the court, but in
173 all cases, the custody plan approved and ordered by the
174 court shall be in the court's discretion and shall be in the
175 best interest of the child.

176 10. After August 28, 2016, every court order
177 establishing or modifying custody or visitation shall

178 include the following language: "In the event of
179 noncompliance with this order, the aggrieved party may file
180 a verified motion for contempt. If custody, visitation, or
181 third-party custody is denied or interfered with by a parent
182 or third party without good cause, the aggrieved person may
183 file a family access motion with the court stating the
184 specific facts that constitute a violation of the custody
185 provisions of the judgment of dissolution, legal separation,
186 or judgment of paternity. The circuit clerk will provide
187 the aggrieved party with an explanation of the procedures
188 for filing a family access motion and a simple form for use
189 in filing the family access motion. A family access motion
190 does not require the assistance of legal counsel to prepare
191 and file."

192 11. No court shall adopt any local rule, form, or
193 practice requiring a standardized or default parenting plan
194 for interim, temporary, or permanent orders or judgments.
195 Notwithstanding any other provision to the contrary, a court
196 may enter an interim order in a proceeding under this
197 chapter, provided that the interim order shall not contain
198 any provisions about child custody or a parenting schedule
199 or plan without first providing the parties with notice and
200 a hearing, unless the parties otherwise agree.

201 12. Unless a parent has been denied custody rights
202 pursuant to this section or visitation rights under section
203 452.400, both parents shall have access to records and
204 information pertaining to a minor child including, but not
205 limited to, medical, dental, and school records. If the
206 parent without custody has been granted restricted or
207 supervised visitation because the court has found that the
208 parent with custody or any child has been the victim of
209 domestic violence, as defined in section 455.010, by the

210 parent without custody, the court may order that the reports
211 and records made available pursuant to this subsection not
212 include the address of the parent with custody or the
213 child. A court shall order that the reports and records
214 made available under this subsection not include the address
215 of the parent with custody if the parent with custody is a
216 participant in the address confidentiality program under
217 section 589.663. Unless a parent has been denied custody
218 rights pursuant to this section or visitation rights under
219 section 452.400, any judgment of dissolution or other
220 applicable court order shall specifically allow both parents
221 access to such records and reports.

222 13. Except as otherwise precluded by state or federal
223 law, if any individual, professional, public or private
224 institution or organization denies access or fails to
225 provide or disclose any and all records and information,
226 including, but not limited to, past and present dental,
227 medical and school records pertaining to a minor child, to
228 either parent upon the written request of such parent, the
229 court shall, upon its finding that the individual,
230 professional, public or private institution or organization
231 denied such request without good cause, order that party to
232 comply immediately with such request and to pay to the
233 prevailing party all costs incurred, including, but not
234 limited to, attorney's fees and court costs associated with
235 obtaining the requested information.

236 14. An award of joint custody does not preclude an
237 award of child support pursuant to section 452.340 and
238 applicable supreme court rules. The court shall consider
239 the factors contained in section 452.340 and applicable
240 supreme court rules in determining an amount reasonable or
241 necessary for the support of the child.

242 15. If the court finds that domestic violence or abuse
243 as defined in section 455.010 has occurred, the court shall
244 make specific findings of fact to show that the custody or
245 visitation arrangement ordered by the court best protects
246 the child and the parent or other family or household member
247 who is the victim of domestic violence, as defined in
248 section 455.010, and any other children for whom such parent
249 has custodial or visitation rights from any further harm.

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